Hawaiian Gazette

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HAWAIIAN



GAZETTE.

VOL. V---NO. 27.3

HONOLULU, WEDNESDAY, JULY 21, 1869. -

FOREIGN NOTICES. BUSINESS NOTICES.

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The way to obtain Sound Health 1ST-CLEANSE the Stomach from the difficulty scenarios of which as which as nothing produce functional development existing the foot.

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Tunned Goat and Sheep Skins,

Supreme Court-In Chambers, HARTWELL, J.-Bill in Equity: AININI, (W.)

OF KALL (K.)

The Bill, after setting out the complain ant's title to certain land on Nunanu street, Honolulu, avers that in November, 1898, the respondent asked her to lease to him for thirty years, at an annual rest of \$5, her dry, or kuls, land, the same being a small portion of her said land, and that she agreed so to do; that December 2, 1808, complainant went, at respondent's request, to the house of one Kahale, where one Levi Kellipio, produced a paper as the lease agreed upon. and read the same to her, partially, as a lease, said Kellipio and the respondent falsely stating to her that the same was a lease of the said portion of her land, and that the complainent, believing said statement, and not knowing how to read or write, affixed her mark to said paper, acknowledged the same before the Register, and received \$5 as the first year's rent; that complainant, about Dec. 10, 1868, obtained a copy of said paper, from which it appears that the same was not a lease of her kula land, but a warranty deed of sale of all her land, the value whereof was would have said so, and that the deed would at least \$600, and which she never desired or intended to sell: that she was advised and assisted by no person in this transaction, but acted solely upon the statements falsely and frandulently made to her as aforesald, by the respondent and said Kelilpio.

The complainant tenders in Court the \$5 paid her, and prays that the said instrument be declared void, and the respondent ordered "P. S. Bartlett" Watch, in 25or. 18 karst to deliver up and re-course to her the prein-

The answer denies that the respondent ever requested a lease, or that any conversation about a lease ever occurred between the parties, and avers that for many mouths previous to said November, complainant had been supported by respondent, at his bouse, and that she desired him to go and live upon her said isod, but fearing to be molested by compilalment's relatives, he declined so to do, unless she would sell the land to him whereupon the complainant agreed to sell. declining the respondent's suggestion to reserve to berself a life interest; and the deed in question was drawn by her instructions. The averments in the Bill of false and fraudplent statements are denied, but it is alleged that the deed was read and explained to the complainant, as a deed of sale, in the presence of several witnesses, before whom she acknowledged the same, and that when acknowleding before the Register, she assented to his question if it was a "palapala kuai,"

(deed of sale.) The answer further avers the respondent to be the son of one Paliols, a woman related to the complainant, and her alkane from early youth, and that by Hawalian custom, the complainant regarded the respondent as ber own son, and desired to sell the land to him to protect berself against the encroachments of one Kunshibi, her nephew, who had sold her house from off her land, and

thrown her movables out of doors. A. F. Judd for complainant.

The following opinion was rendered in this The complainant seeks to have the Court exercise its equity jurisdiction by setting saide a conveyance of land, and declaring rust, as are all cases involving questions rob-

were admitted to supersede duly executed vate residence, immediately after it was their own improvident acts, to which they ber behalf, or their own, had learned that a have been induced by false representations deed of sale had been recorded.

of cases in which Equity relieves. It is popularly supposed that the province In either case, it is void. of Equity is to set saide the rigid rules of I had, at first, some doubt whether the common law and ancient precedents, and to decide arbitrarily, according to the merits and hardships of each case. Nothing is further from the truth, or more fall of danger to the administration of justice than such a doctrine. Under the Constitution and laws, no Court can exercise a discretionary nower, in defiance of sound and established principles, both of law and equity. "There are certain principles on which Courts of Equity act, which are very well settled. The cases which occur are various; but they are decided on fixed principles. Courts of Equity have, in than Courts of Law. They/decide new cases as they srise, by the principles on which former cases have been decided. But the principles are as fixed and certain as the principles on which the Courts of common aw proceed." [Lord Redesdale, in Bond vs.

Horkins, 1 Sch. & L., 418.] First: What was the consideration of this

ported her, but whether this was from in CONSTANTLY ON HAND and for shility or unwillingness, does not appear The evidence shows no bostility existing be-nand guriel no; when all around is dreary tween her and these relatives, and does not sustain the allegation in the answer, that they and hurry oph to bed leaving us tempether. had sold her house, and thrown out her

\$\$6.00 PER YEAR.

The respondent's counsel argue, that while the consideration expressed was sufficient to support the deed, the real consideration was that of love and affection, and was sufficiently expressed by the deed in the words "kelk! a kun aikane." A good or meritorious consideration-by which is usually intended a consideration of love and affection between parties related by blood or marriage,-or a valuable or necuniary consideration, however small, may support a deed. Nor is there anything to prevent one, so far as he is himself affected, from making a deed of gift of land. The statute of 27 Elia, said to affirm the common law, only avoided voluntary conveyances in favor of subsequent bona fide purchasers for value. Admitting that the relations shown to exist between the parties would be sufficient to form a good consideration, and that deeds here are often drawn in an inartificial manner, still I can not regard this as a deed of gift. The words "keikl a kun alkane," merely describe the grantee. The deed expressly makes \$5. the full consideration, and makes no reference to any other. If the complainant had

hardly fail to express such intention. The witness, Kabale, testified that the respondent gave him \$5 to say that this was a deed of sale, whereas he knew it was a lease. I do not, however, place much confidence in this witness. It is not likely that he, alone, of those present at the execution of the deed, would have been bribed, nor would it seem necessare to bribe him. Probably none but the attorney knew a lease from a deed of sale, on hearing it read, nor could they know how much of the deed was read. might not note the exact description of the mises. The witness Mele says: "Ferhaps the consideration was \$5 a year, or \$5; she is not sure, as she did not attend particularly.

intended to give away her land, I think she

To support the allegation of an agree ment to lease the kula land, the witness Kamake testified that he had board the respondent say be would take a lease for 30 years at \$5 annual rent, and had heard complainant say he might have it. Kallimal, Kumaka, and Akoni testify that the day after the date of the deed, the respondent said he obtained such a lease, and Mr. Beckwith testified that the complainant made such a statement to Previous agreements to lease are not in-

consistent with a private sale, and both par-

ties may have private reasons to call this a

lease, contrary to the fact. Kala may have wished to avoid trouble with the relatives. and Alpini may have been induced to retract. But I must look at all the circumstances of this transaction. The complainant's entire interest in this land was worth from \$600 to \$800. She is evidently aged, ignorant and dependent. A lease of the kula land for 30 years, might not, as argued, be an insufficient consideration, so as to raise a presumption that a sale might as well have been intended. The statement of the witness, Mele, made inadvertently, seems to indicate that some pearly payment was mentioned. The trade R. G. Duvis and R. H. Stanley for respondseems to have been kept secret from Ainini's relatives, who would naturally have been consulted, or at least been informed of any proceedings which were fair and above board. But the complainant placed confidence in the respondent, and considering void a deed of sale which, on its face, appears this fact, and her age and infermities, the to be good in law. This is an important Court will scrutinize this alleged sale with cerning titles in land. Particularly in this The burden of proof is on the respondent, country, it is desirable firmly to maintain in a case like this, to show that the bargain those rules of law and of statute, by which was fair and just, and that confidence was land titles are secured under deeds executed not betrayed. [Huguenin vs. Basely, 14 Ves.,

with all solemn formalities. Real property 271; Chesterfield vs. Janesen, 2 Ves., 156.] would scarcely deserve its name, if, except | Especial haste appears in the deed being for strong and clear reasons, parole evidence acknowledged before the Register, at his priexecuted. There seems to have been an im-Nevertheless, Equity jurisdiction is granted | mediate denial by the corrplainant, that she to protect the helpless and ignorant against | had sold her land, as soon as those acting in

from those in whom they had reposed es- I am of the opinion that this deed was pecial trust. Violations of trust, and undue made improvidently-being undue advandvantage taken of credulity and ignorance, tage taken of a position of trust, to drive farnish the groundwork of a large number an unfair bargalu with this aged woman, or else that the deed was fraudulently obtained.

> deed should not be reformed into a lease. but if a part of the inducement for the lease was that the respondent should support the complainant, it would be a hardship to remit her to his tender mercies. I regard the whole transaction as an imposition on the comelainant, and not as a case of mutual mis take, or paris delicti.

clared void, and that the respondent deliver up and re-convey the premises to the complainant. Notice given of exceptions, and appeal to

I accordingly decree that the deed be da-

EXPLORING NEW YORK SEWERS.—The New York papers tell the story of a Con-necticut Tankee who has just made a suc-cessful exploration of the sewers in that city. His name is J. W. Crane, a "Down-easter" by birth and residence. He had frequently heard fabulous accounts of the Empire City, and having seen, a vers are, a paragraph in a

the full Court.

June 30, 1809.

First: What was the consideration of this deed?

There is some evidence, on the part of the respondent, that he had agreed, in part payment, to support the complainant. But the deed sets out no such agreement, and it is denied by the complainant. The complainant may have expected to live with respondent, in a house he was to build on her hais land, and this may have been an inducement to her to sell or lease; but the evidence on this point is not entirely satisfactory. Probably there was a friendly feeling between the parties; the complainant, in her short stay in Honoringhia, and lived in the respondent's house, and having seem, a year ago, a paragraph in a Boston paper, describing the adventures of a woman and a boy in the New York sewers, he determined to seek for the tressures supposed to be contained in the underground tity. He left the Hab and started for New York, where he arrived in due time. With the spirit of adventure, and the shrewdness of a Yankee, he provided himself signing all the sewers in the city, a compass, escadies, and six shooter to defend himself against rats, or anything else that might impede his progress. After domning his water-proof appared, he entered a sewer in Houston street, near the North River. He picked his way through all the occupialisant, in her short stay in Hootoning his water-proof appared her, having steen, a year ago, a paragraph in a Boston paper, describing the New York woman and a boy in the New York sewers, he determined to seek for the tressures supposed to be contained in the underground tity. He left the Hab and a boy the woman and a boy in the New York woman and a boy in the New York sewers, he determined to seek for the tressures supposed to be contained in the underground tity. He left the Hab and a boy the woman and a boy in the New York woman and a boy to keep the New York woman and a boy to keep the new of a Yankee, he provided himself with a rubber outfit, a ground map showing all the sewers in the city, a compass, cardier, and the shouter for New York,

A PAUNTING PIT.-Tight lacing.

Hawaiian Gazette BOOK AND JOB

PRINTING ESTABLISHMENT! THE "GARRETS" OFFICE

PLAIN AND PANCY PRINTING OF EVERYDESCRIPTION.

Asses' Mus.-The male de

WITH NEATNESS AND DISPATCH

precisians would say ass, for donkey is not a dictionary word—is now having his praises sounded as a greature to be desired for cell-nary purposes. Hitherto it has been the formale donkey which alone could claim any share in nourishing the human race. Assessibility in the modern of the could be a seen the formale donkey which alone could the Rachaels of classical times made their patroneses beautiful for ever by immersing them in baths filled with the milk of asses. The lovely Poppess kept five hundred she-asses for this very purpose, and daily bathed in their milk, until Nero kicked her to death; and thus constituted the type of those brutish husbands of whom the police reports occasionally inform us. From inabiling the milk out wardy through the porce of the skin, like Jocy Ladle, the transition was easy to drinking the milk which was found to be most beneficial to invalids of both sexes and all ages, as well as to infaint who were deprived of their natural sustenance. But asses milk is not always easy to procure; and perhaps my experience on this point may be worth telling. The doctor said that my eldest boy—then an infant—instantly required cither a west-aursor asses' milk. Neither could immediately be procured. The old rector of the parish had recently been kept alive by the milk from a female ass; but both it and the rector had departed. I thought, "Everything can be procured in Loudon; I will go there." I at once went, seventy-eight miles by train, and reached the Old Hummums late at night. The first thing, after an early breakfast, Lasked the landlady to tell me where I could procure asses' milk. She could not tell; no one could tell; perhaps I had better go to Hampstead Heath, or try certain along his Covent Garden. I did so, and went hither and thither, but no one knew anything about asses, milk, or could staggest where it could be bought. I asked at chemists', and at surgeon's, and at confectioner's, for four weary hours; and then, being oblidged to get back home, was five glineas, "the price being l

Duchess of Kent.—Once a Week.

Chisese Street Juggiers and mountebenks abound in Canton, and in fact every Chinese city. They also travel from place to place throughout the country, displaying their feats and picking up a few coins here and there. As a general thing their juggling feats do not amout to a great deal, yet some of them are very clever, and would create fully as much of a theatrical furore in the United States as did the Japanese performers. Sword swallowing and stone ceiling appear to be the commonent feats, and operators of this description can be seen in almost every street. One fellow, however, performed a number of feats in front of our hotel which demanded from me more than passing notice. He stationed himself in the centre of the street, and having blown a blast upon a bugle to give warning that he was about to begin his entertalnment, he took a small lemon or orange tree, which was covered with fruit, and balanced it upon his head. He then blew a sort of chirruping whistle, when immediately a number of rice birds came from every direction and settled upon the boughs of the bush he balanced or futtered about his head. He then took a cup in his hand and began to raftle some seeds in it, when the birds disappeared. Taking a small leamon or the worse of the brust, when it to be not few one of the brust, when it opened, and out few one of the brist, when it opened, and out few one of the brist, when tamoos tuoe, he next took the seeds and p ting one in it blew it at one of the fruit, wh it opened, and out flew one of the birds, whi fluttered about the circle surrounding the p former. He continued to shoot his seeds dustered about the circle surrounding the performer. He continued to shoot his seeds at the oranges until hearly a dozen birds were released. He then removed the tree from his forehead, and setting it down took up a dish, which he held above his head, when all the birds fiew into it, then covered it over with a cover, and giving it a whirl or two about his head, opened it and displayed a quantity of eggs, the shell of which he broke with a little stag, releasing a bird from each shell. The trick was neatly performed, and defied detection from my eye. The next trick was equally ciever and difficult of detection. Borrowing a handkerchief from one of the spectators, he took an orange, cut a small hole in it, then squeezed all the jaice out, and crammed the handkerchief into it. Giving the handkerchief to a hystander to hold, he caught up a teapot, and began to pour a cup of tea from it, when the spout became clogged. Looking into the spout apparently for the purpose of detecting what was the matter, he pulled out the handkerchief, and returned it to the owner. He then took the orange from the bystander and cut it open, when it was found to be full of rice. He performed a number of very pleasing feats, but I have given enough to satisfy the readers that they are equally as expert as the Japanese.

A FACETIOUS JUDGE.—A mirth-loving judge, Justice Powell, could be as thoroughly humourous in private life as he was fearless and just upon the bench. Swift describes him as a surprisingly merry old gentleman, laughing heartily at all comic things, and at his own droil stories more than sught cise. In court be could not always retrain from jucularity. For instance, when he tried Jane Wenham for witchcraft, and she assured him that she could fly, his eye twinkled as he answered, "Weil, then, you may; there is no law equinat flying." When Powler, Bishop of Gioucester—a thorough believer in what is now a days called spiritualism—was persecuting his acquaintance with silly stories about ghouts, Powell gave him a telling reproof for his credulity by describing a horrible apparition which was represented as having disturbed the narrator's rest on a previous night. At the hour of midnight, as the clocks were striking twelve, the judge was roused from his first sumber by a hideous sound. Starting up, he saw at the foot of his uncompanioned bed a figure—dark, gloom, terrible, holding before its grim and repulsive risage a lamp that shed an uncertain light. "May heaven have mercy on us!" tremulously ejaculated the bishop at this part of the story.

me, " two roads through this world. De one dition, and de udder am a narrow and broad road dat leads to sure destruction." "If dat am de case," said a sable heater, "this called